

TESTIMONY BY KANOE MARGOL  
INTERIM EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM  
STATE OF HAWAII

TO THE HOUSE COMMITTEE ON FINANCE  
ON  
SENATE BILL NO. 1324, S. D. 2, H.D. 1

APRIL 7, 2015, 2:30 P.M.

RELATING TO DIVORCE

Chair Luke, Vice Chair Nishimoto and Members of the Committee,

S.B. 1324, S.D. 2, H.D.1 proposes to require the Employees' Retirement System (ERS) "administrator" to make direct payments to a non-member former spouse a portion of the member's pension, annuity or retirement allowance by a final judgment, order or divorce decree.

The ERS Board of Trustees strongly opposes this bill. This proposal provides no benefit to the ERS membership, and in fact, penalizes all members who are responsible, single or married by diverting funds and resources to a population of non-ERS members. Further, the current version of this proposal makes no appropriation from the general fund for its implementation. The cost of implementing and maintaining S.B. 1324, S.D.2, H.D.1 will therefore have to be paid from the investment earnings of the ERS. This will add to the System's \$8.6 billion unfunded liability; a liability that the ERS, the Administration and the Legislature have conscientiously worked to reduce over the last 5 years.

Therefore, considering the ERS's unfunded liability, a situation that already jeopardizes the System's promised benefits to current and future retirees, the ERS requests an appropriation out of the State general fund (versus ERS funds) for the implementation of this bill, should your Committee choose to move this bill forward, despite the strong opposition of the ERS Board of Trustees.

The ERS staff also has operational and technical concerns with respect to the current form of S.B. 1324, S.D. 2, H.D. 1. This bill amends section 88-93 to implement direct payments to a retirant's former spouse. Section 88-93 does not apply to retirement benefits; it applies to the designation of beneficiaries by actively employed ERS members or for former ERS members who have not retired. The bill also appears to deprive the parties to an order issued pursuant to the bill from the exemption from State taxation currently applicable to ERS retirement benefits. (See, page 3, lines 9 and 10: the order must "[require] that each party shall be taxed on the share of the retirement benefit received . . . .") In addition, this bill directs the "administrator" of the ERS to make payments to the former spouse of a member. There is no ERS "administrator" (the Legislature changed the title to "Executive Director" in 2013) and it is the "**system**" that actually disburses retirement benefits.

This bill will require modification of the ERS computer system, adoption of administrative rules, development and implementation of operational policies and procedures, and educational outreach to the various stakeholders to properly implement and administer the bill. Additional staff (and possibly legal and actuarial) resources would be required to review, calculate,

process, track and maintain these additional non-member payments. In its current version, this bill is so broad in scope that, in comparison to the previous version of the bill, it will require more time and money to properly implement and administer because it will be necessary to fill in more gaps by rule making and require more extensive computer programming to address all possible outcomes.

If it is this Committee's desire to move this bill move forward, ERS staff requests that the language of the bill revert back to the S.B. 1324, S.D. 2 version, which provides more clarity and safeguards for the ERS members and former spouses, thereby limiting the possibility of unnecessary and potentially costly litigation and reducing the costs of implementing and administering the bill. For example, S.B. 1324, S.D. 2 requires that the judgment, order or decree must state the amount or a percentage of the retirant's benefit payable to a former spouse, allows for the former spouse to receive a portion of a refund payment in the event the member terminates prior to retirement, and specifies when payments to a former spouse commence and terminate.

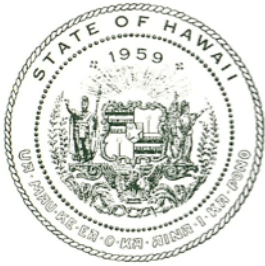
Staff also requests that the costs of implementing the bill be defrayed by a State general appropriation for the fiscal year beginning July 1, 2015.

If the bill moves forward with the language of S.B. 1324, S.D. 2, staff also requests an effective date for the substantive provisions of no earlier than July 1, 2017, to allow time for modifications to the ERS pension computer system, rule-making, communication and educational outreach and other operational changes, If the bill remains in its present form, staff requests an effective date for the substantive provisions of no earlier than January 1, 2018; the additional time will be required for more extensive rulemaking and computer modifications.

In summary, the ERS strongly opposes this bill and respectfully requests that this bill be held. If, however, the bill moves, ERS staff requests that the ERS be provided with the time and resources to properly implement the bill and that the bill be amended to provide clarity and safeguards for the benefit of all interested parties.

Thank you for the opportunity to provide testimony on this measure.

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

COMMISSIONERS:

ELENA CABATU  
CARMILLE LIM  
AMY MONK  
LISA ELLEN SMITH  
MARILYN LEE  
JUDY KERN

Executive Director  
Catherine Betts, JD

Email:  
DHS.HSCSW@hawaii.gov  
Visit us at:  
humanservices.hawaii.gov  
/hscsw/

235 S. Beretania #407  
Honolulu, HI 96813  
Phone: 808-586-5758  
FAX: 808-586-5756

April 6, 2015

To: Representative Sylvia Luke, Chair  
Representative Scott Nishimoto, Vice Chair  
Members of the House Committee on Finance

From: Cathy Betts, Executive Director  
Hawaii State Commission on the Status of Women

Re: Testimony in Support, SB 1324, SD2, HD1, Relating to Divorce

The Commission supports SB 1324, SD2, HD1, which would provide statutory authority for state employees' retirement to become divisible, with benefits payable to the former spouse by the administrator of the retirement system.

Currently, state employee retirement benefits are not divisible. Although a valid divorce decree may provide for a spousal split in benefits, our HRS doesn't provide for a system or mechanism to actually pay out the benefits to a former spouse. The Commission is concerned with survivors of domestic violence, who believe that they will receive retirement benefits per their divorce decree. The current process for survivors who are eligible to receive benefits from their former spouse/abuser is to locate their former spouse/abuser to ask for the benefits due to them. This is not the safest or most economical means of ensuring benefits to survivors. A change in statute would allow for the administrator to pay direct benefits to the survivor, thereby avoiding a difficult and traumatizing process.

Even absent abuse, it makes logical sense to update the retirement system so that benefits are easily divisible. Thank you for your consideration of this important bill.

**TESTIMONY OF THOMAS D. FARRELL**  
Regarding Senate Bill 1324, SD 2, HD 1 Relating to Divorce

House Committee on Finance  
Representative Sylvia Luke, Chair

Tuesday, April 7, 2015 2:30 p.m.  
Conference Room 308, State Capitol

Dear Representative Luke and Members of the Committee:

I support SB 1324.

All retirement plans, including ERS, are marital property and are divisible by the Family Court in a divorce action. This legislation does not change that. In most cases, when a non-member is awarded a share of a member's retirement plan, direct payment can be had from the plan administrator. In the private sector, this occurs by way of a "Qualified Domestic Relations Order" and there are similar devices in the case of military and federal Civil Service retirement pay. However, because of the inalienability provisions of Chapter 88, when ERS retirement plans are divided in a divorce, the plan member must make the payment to the former spouse and the plan administrator is not allowed to do so. This bill would reverse that and bring ERS into line with all other retirement plans.

This change would benefit the former spouse as well as the ERS member. In the case of the former spouse, the bill would ensure that he or she gets what the court ordered. In the case of the member, the bill would relieve him or her from a lifetime of writing monthly checks, and would also ensure that the ERS retiree is taxed only on that portion that he or she actually receives.

I have reviewed the language and technical amendments incorporated into Senate Draft 2, House Draft 1 and have no objection to them. **I recommend however, that the ten percent fee language be made a little more specific. I assume that the House Committee on Labor and Public Employment intended that ERS be allowed to assess a fee of no more than ten percent of the retirant's undivided monthly benefit as an administrative fee, and to be apportioned equally between the retirant and the ex-spouse. I also assumed that the authors of HD1 intended to permit ERS to assess this fee each and every month, and not on a one-time basis. If that is so, and you agree that this is what you want to happen, then the bill should explicitly say so in order to avoid future disputes over how the fee is computed.**

Divorce ♦ Paternity ♦ Custody ♦ Child Support ♦ TROs ♦ Arbitration  
also handling national security cases involving revocation or denial of security clearances

---

700 Bishop Street, Suite 2000, Honolulu, Hawaii 96813  
Telephone 808.535.8468 ♦ Fax 808.585.9568 ♦ on the web at: [www.farrell-hawaii.com](http://www.farrell-hawaii.com)

---

\*Certified by the National Board of Trial Advocacy. The Supreme Court of Hawaii grants Hawaii certification only to lawyers in good standing who have successfully completed a specialty program accredited by the American Bar Association.

I note that the ERS Board opposes this bill because of the cost of implementation, although I would think that the issue has been solved by House Draft 1. In fact, that is a rather heavy tax to impose, but it should more than address ERS' concerns. I have previously testified and continue to believe that ERS's estimates of the cost of implementation are far-fetched and have no basis in reality. In testimony to the Senate Ways and Means Committee on 2/27, ERS claimed that it will take a million dollars to implement this, and in testimony on 3/4 to the House Finance Committee, ERS upped its estimate to \$2 million---a figure they maintained on 3/20 during testimony before the Senate Committee on Judiciary and Labor. I suggest to you that these numbers are utter nonsense, and are not supported by any serious analysis.

There are about 5,000 divorces per year that are granted in Hawaii. About 1.4M people live in the State of Hawaii. This includes all the military folks that are assigned here. There are about 70,000 state and county employees. If the proportion of divorces involving state or county employees is the same as their proportion to the general population, then 5% of divorces will involve at least one ERS member spouse. That's a potential universe is 250 decrees per year to handle. However, most divorce decrees don't divide pension benefits; this tends to occur only in long marriages where there aren't sufficient assets to award the non-member to offset his/her interest in the member's pension. Perhaps 20% of these divorces would involve division of the ERS pension. That gets it down to about 50 cases per year. While there are potentially hundreds of divorce decrees out there that already divide ERS pensions, none of them will comply with the requirements that SB 1324 will impose without a trip back to Family Court for amendment. Most people aren't going to do that if the retirant is making direct payment in accordance with the existing decree or hasn't retired yet. The bottom line is that it shouldn't take \$2M to process 50 or so divorce decrees a year.

ERS has previously defended their inflated estimate by claiming that this number was given to them by the contractor who has designed their proprietary computer system. They say it takes \$2 million to rewrite the program to allow payment to a third-party non-member. That's nonsense because ERS is making deductions from members' retired pay and sending it to third-parties already. They withhold federal taxes, for example, and send them to the IRS. And they withhold child support when presented with a child support income withholding order, which can come from any one of literally hundreds of child support enforcement agencies throughout the country.

So don't let ERS scare you with big numbers that have no basis in fact. The real reason is that they just don't want to be bothered to do this. Everyone else does, however, and it's time for ERS to join the rest of the world.

From: mailinglist@capitol.hawaii.gov  
Sent: Monday, April 06, 2015 1:57 PM  
To: FINTestimony  
Cc: sasha\_98@ymail.com  
Subject: Submitted testimony for SB1324 on Apr 7, 2015 14:30PM

**SB1324**

Submitted on: 4/6/2015

Testimony for FIN on Apr 7, 2015 14:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Sasha Ota	Individual	Comments Only	No

Comments: Please remove the fee amendment in the current draft of this bill and substitute authority for a reasonable fee-for-services protocol. A 10% fee on a lifetime of hard-earned pension could mean tens of thousands of dollars. This is absolutely unjustifiable and will cause this long overdue bill to be rendered meaningless. Thank you.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)